A. Interpretation – aff must defend a holistic view of punishment that values rehab in both its teleological and entitling justifications. **Lessnoff 71**[[1]](#footnote-1)

**What**, then, **is the justification of punishment?** Punishment has in common with a good deal of human behaviour the fact that it causes harm, suffering, inconvenience, etc., to individual victims. Such behaviour may be institutionalized or purely private. A commonplace example of the latter kind is causing noise late at night, thus preventing one's neighbours from sleeping. Imagine such a case actually to happen-X plays his record-player until 3 a.m., so that Y cannot sleep. Suppose now that a third party asks X to justify his behaviour. X, let us say, replies as follows: "My friends and I get a lot of pleasure from the music; and anyway Y has always been a rude and unfriendly neighbour ". Here X has given two justifications for his behaviour; yet they are totally different in type. The word 'justification' is ambiguous. The pleasure derived from the music is X's Justifying Aim for his behaviour; the past rudeness and hostility of Y is no such thing, but rather the consideration that, in X's eyes, permits him to ignore (or at least override) Y's interests. The first half of X's reply can be taken to be an answer to a question such as 'What good does your behaviour do?' (though probably no such question was intended in the imaginary example); the second half, to such a question as 'What entitles you to treat a person in that way ? (i.e., to hurt him)?'. **The former may be called** the question of **teleological justification, the latter** that of **entitling** justification. A similar dichotomy of justifications is applicable to many social institutions. **Take, for example,** the institution, in our own society, of **compulsory purchase of** private **property** by public authorities. Like punishment, and like causing noise late at night, this causes some suffering (or at least inconvenience) to individuals, and hence demands justification. Again, two kinds of justification can be given for the practice as it exists in our society: first, that compulsory purchase is necessary for the sake of economic development, amenity, etc.; second, that those whose property is taken from them receive fair compensation. Here, economic **development and amenity are teleological** justifications, while **fair compensation is the entitling justification** that (allegedly) reconciles the pursuit of these goals with justice to the individual. Clearly the case of punishment is precisely parallel: the teleological justification (Hart's General Justifying Aim) is the reduced occurrence of wrongful acts; the entitling justification is the guilt of the offender. Thus Hart's distinction between a utilitarian General Justifying Aim of punishment and partly retributive Principles of Distribution, takes its place as one example of a larger family of distinctions, between teleological justification and entitling justification of behaviour that causes suffering or inconvenience to individuals. The problem of entitling justification is more or less the problem of avoiding injustice in the pursuit of goals, however admirable. It is a crass error to make a natural entitling justification serve as a teleological justification; and this, surely, is what could happen if anyone deduced from the fact that unjust punishment can be avoided only by punishing only the guilty, the conclusion that the aim of punishment is to make the guilty suffer. Such a view is no more plausible than the corresponding view that the aim of compulsory purchase is to compensate the expropriated for inconvenience suffered. Although the question, 'What justifies punishment ?' is ambiguous, the correct answer to the question 'Why punish ?' is utilitarian. It is in this sense that the utilitarian theory of punishment is essentially correct. If these considerations are correct, it follows that there is less difference between punishment and other institutions involving the exercise of state authority than has sometimes been thought-such institutions as quarantine, taxation, or military conscription. These are **all institutions which involve** inconvenience and even **hardship to individuals**; all of them, therefore, **require both a teleological and an entitling justification.** In the case of conscription, for example, the typical teleological justification would be that it is necessary for the defence of the nation, or (less respectably) to extend its boundaries; the entitling justification, that defence (and expansion) benefit the conscripted individual also. This, however, is not sufficient for an adequate entitling justification; also required is that the burdens of conscription are fairly distributed among the population. As for taxation, the teleological justification is complex: partly, that taxation is necessary to finance all the useful services that the state provides; partly, that it is used to redistribute wealth more equally. The entitling justification is, partly, that those who pay tax benefit from the services provided; and, in so far as this is not so (redistributive taxation by definition means that some taxes are paid by certain individuals for the benefit of others), that it is just that the relatively rich should be made to pay for benefits for the relatively poor. In the case of quarantine regulations, the teleological justification is obvious enough, but an entitling justification might appear to be lacking. However, I believe this is not the case-the entitling justification is that the harm done to the individual is slight, both absolutely and in relation to the harm that might be done to others by the absence of such regulations. The case of redistributive taxation shows that the teleological justification of a social institution need not be utilitarian-in this case, it is rather the achievement of greater social justice. It would, therefore, be more plausible to say that the justification of taxation is retributive, than that the justification of punishment is; for, if retribution means giving each individual his just deserts, then it is at least partly the purpose of redistributive taxation to proportion each individual's share of the wealth of the community more nearly to his just deserts than the market, according to one (admittedly controversial) view of justice, can do. Redistributive taxation also shows that where the teleological justification of an institution is that it does justice (or rather, corrects injustice), no separate entitling justification is needed-rather, the two kinds of justification coincide. But this is what one would expect, since, as was pointed out above, the problem of entitling justification is the problem of avoiding injustice to individuals in the pursuit of goals. If retribution were the teleological justification of punishment, it would be its entitling justification also-but I have argued that here the teleological justification is utilitarian. Another way to illuminate what seems to be the true relationship be- tween retributive and utilitarian considerations in regard to punishment is to invoke the distinction, commonplace in sociology, between goals and norms.7 Norms are socially sanctioned rules of behaviour, which impose obligations on individuals and restrictions on actions. Some norms prescribe what must be done, others forbid what must be avoided (these are prohi- bitions). Typical prohibitions forbid lying and stealing, and taboo incest. Such norms do not specify what goals individuals or groups may aim to achieve, but they do forbid, first certain goals, secondly certain means to permitted goals. They license the pursuit of legitimate goals, subject to certain restrictions as to means. For example, in our own society business firms may pursue maximum profit so long as they do not use force, fraud, etc., to that end. The point of the norms prohibiting force and fraud is mainly to avoid injustice to other individuals. This precisely parallels the situation in regard to the institution of punishment. Punishment is a means to the goal of reducing wrongdoing; but it is only a legitimate means if it avoids injustice to individuals, and the rights of individuals are protected by restrictive norms which prohibit the punishment of the innocent, and unduly severe punishment even of the guilty. In regard to punishment, utilitarian theory states the goal (aim, purpose) of the institution, while retributivism states merely one of the norms that govern the pursuit of this goal, as of all goals. The view of **the justification of punishment** taken in this paper might be called a two-stage one: first, one asks what general goal is (supposedly) forwarded by punishing; secondly, one **asks why**, and in what circumstances, **one is entitled to forward that goal** by means of punishment. It may, therefore, be worthwhile to distinguish this approach from another two-stage analysis, which also concludes that utilitarianism gives the correct answer to one stage, while the correct answer to the other requires retributionism.[…] [Full text available] Conversely, the justification of an act of punishment is also necessarily utilitarian, since without such acts (in appropriate cases) a system of punishments could not exist, and the beneficial consequences of punishment would not exist either-each individual punishment makes its contribution to the total effect. In other words, in regard to the justification of punishment, the correct distinction is not between different aspects of punishment, but between different senses of 'justification'. **Every aspect of punishment**-act, rule, and practice-**requires a dual justification;** that is, a **teleological** justification **and** an **entitling** justification. [End of Article]

B. Violation – Lessnoff’s utilitarian theory of punishment is neg ground. It values retribution as a side constraint on whom we are entitled to punish. **Lessnoff 71**[[2]](#footnote-2)

Nor is it of much use to argue, as some utilitarians do, that their theory cannot justify punishment of the innocent, because there is no such thing- because 'punishment' means inflicting suffering on a person guilty of an offence, for that offence.4 For, the relevant sense of 'guilt' is here moral (not merely legal) guilt; and to deny that there can be legally correct punishment of morally guiltless acts is to deny that a law can be unjust, which is absurd. **Utilitarian**s would do better to defend themselves by saying that their **theory is an answer, not to the question, 'What justifies punishment?', but to** the different question **'What justifies punishment of the (morally) guilty?'. This** simple modification **would** more satisfactorily achieve the desired result of **prevent**ing the **util**itarian **theory from justifying punishment of the innocent.** It also has the advantage of exposing rather clearly the real moral issue between the opposed theories of punishment. For the thoroughgoing retributionist answer to the question, 'What justifies punishment of the guilty ? ' is 'Their guilt, simply', while the utilitarian answer is 'The tendency of the punishment to reduce the occurrence of wrong acts'. Choice between these two answers depends, of course, on a value- judgment ; perhaps to most people the utilitarian answer seems more humane and therefore preferable. But utilitarianism is charged, not only with possibly justifying punishment of the innocent, but also with possibly justifying savage punishment of the guilty, if this were an effective way of reducing crime. At this point a retributive theory may still seem preferable, for it at least limits the severity of punishment, admittedly in a rather vague way, by the degree of moral culpability of the offence. But this difficulty has been solved by Professor Hart,5 through his distinction between the General Justifying Aim of punishment and its Principles of Distribution (determining who may be punished, and how much). The General Justifying Aim of punishment as a social institution, as of any social institution, is the purpose it serves, the benefit it secures, the good it does. For a thoroughgoing retributionist, the General Justifying Aim of punishment is to ensure that wrongdoers suffer as they deserve; for a utilitarian, it is to diminish the amount of wrongdoing. All social institutions that are deliberately established or maintained have a General Justifying Aim (a manifest function, in the language of the sociologist Robert Merton6); only some of them involve questions of distribution also. In the case of punishment, by its very nature, this second question arises as well. As Hart shows, a contention **that the point** of institutionalizing some system of punishment **is to reduce wrongdoing, by no means determines who is** to be **punished, or how much** (in other words, does not determine precisely what system of punishment should be institutionalized): for the pursuit of a goal does not imply that one neglects all other values. Since punishment involves the infliction of suffering on individuals, the rights of individuals are obviously relevant to its distribution. The Principles of Distribution that most people, perhaps, would accept, lay down that punishment should be imposed only on persons guilty of an offence, and should not be more severe than the moral culpability of the offence justifies. It is here that the idea of retribution properly comes into the picture; but, as Hart stresses, **holding to retribution in the distribution of punishment** does not entail the conclusion that retribution is the General Justifying Aim of punishment, nor **is** it in**consistent with the view that its** General Justifying **Aim is util**itarian. .[…] [Full text available] Punishment is a means to the goal of reducing wrongdoing; but it is only a legitimate means if it avoids injustice to individuals, and the rights of individuals are protected by restrictive norms which prohibit the punishment of the innocent, and unduly severe punishment even of the guilty. In regard to punishment, **util**itarian **theory states the** goal (**aim**, purpose) of the institution, **while retributivism states** merely one of **the norms** that govern the pursuit of this goal, as of all goals. **The view of** the justification of **punishment taken in this paper might be called** a **two-stage** one: **first, one asks what** general **goal is** (supposedly) **forwarded** by punishing; **secondly, one asks why**, and in what circumstances, **one is entitled to forward that goal** by means of punishment. It may, therefore, be worthwhile to distinguish this approach from another two-stage analysis, which also concludes that utilitarianism gives the correct answer to one stage, while the correct answer to the other requires retributionism. This is the theory (associated above all with John Rawls)8 which depends on a distinction between justifying a rule, and justifying an act. Rawls distinguishes the question, 'Why put J in jail ?' from the question 'Why put people in jail ?'. The answer to the first question is something like 'Because J robbed the bank'; the answer to the second, 'In order to protect society against wrongdoing'. Hence, Rawls concludes, utilitarian considerations are sufficient to answer the questions "whether or not to use law rather than some other mechanism of social control, . . and what laws to have and what penalties to assign "; but the working of a system of law in particular cases must be retributive in form, since by definition applying a law means punishing persons who have broken it, and only them. In other words, the justification of a particular act of punishment is retributive; the justification of a rule of law that prescribes punishment is utilitarian. Unfortunately, Rawls' formulation seems both confused and mistaken. Whether to use law rather than some other means of social control is a different issue from what laws to have and what penalties to assign: the first is not a question of what rules to have, but of whether to have a particular kind of rules; the second is a question of what particular rules of that kind to have. Only the second sort of issue is properly described as the justification of rules; and neither issue can properly be settled solely by reference to the consequences of the application of such rules (i.e., to utilitarian considerations) ; although, if such rules are justified, it is quite correct to describe the justification as utilitarian (in the teleological sense of 'justification'). The effectiveness of law and punishment as a means of social control does not suffice to justify the use of these techniques; for it may be that they impose suffering on people unjustly. Such would be the view of a retributivist who is also a determinist and so believes there is no such thing as moral culpability-hence, for him, there should be no punishment. Again, if one believes that there is both a teleological (utilitarian) and an entitling (retributive) justification for the use of punishment, one cannot decide what laws to have and what penalties to assign on utilitarian considerations alone; that would be to invite penalties of unlimited severity, if this were an efficacious means of social control. In the total design of a particular system of punishment-in deciding on the rules that constitute it-the pursuit of the goal of social control must be governed by the restraints required to ensure justice to individuals, that is, by retributive rules (i.e., rules dictated by retributive principles) that limit the permissible severity of penalties (Hart's remarks on mitigation and excuse are relevant here, for the application of these concepts in law is governed by rules).9 Laws of strict liability seem immoral to many people because they flout such retributive rules for the sake of beneficial consequences. As for the justification of particular acts of punishment, Rawls' formulation fails to do justice to either the retributive or the utilitarian aspect of the matter. For Rawls, such acts of punishment are justified if prescribed by a law which itself has a utilitarian justification. Since laws cannot be justified in the way that Rawls supposes, this must be amended to the formula that an act of punishment is justified if prescribed by justified rules of law. This shows that the retributive element in the justification of an act of punishment cannot be reduced to the condition that the act is prescribed by a rule. On the contrary, **it is necessary that** the act of **punishment be inflicted only on one who is** morally **guilty, and that** the **severity** of the punishment **reflect the degree of guilt.** It is in this sense that **the justification** of an act **of punishment is retributive-but** so it is equally of a rule of law that prescribes punishment, and of the practice of punishment as such. Conversely, the justification of an act of punishment is **also** necessarily **util**itarian, since without such acts (in appropriate cases) a system of punishments could not exist, and the beneficial consequences of punishment would not exist either-each individual punishment makes its contribution to the total effect. In other words, in regard to the justification of punishment, the correct distinction is not between different aspects of punishment, but between different senses of 'justification'. Every aspect of punishment-act, rule, and practice-requires a dual justification; that is, a teleological justification and an entitling justification.

C. Standards

1. Ground. Neg can’t win with only teleological justification ground. **Lessnoff 71**[[3]](#footnote-3)

**It is a crass error to make** a natural **entitling justification serve as** a **teleological justification; and this**, surely, **is what could happen if anyone deduced** from the fact that unjust punishment can be avoided only by punishing only the guilty, the conclusion **that the aim of punishment is to make the guilty suffer. Such a view is no[t]** more **plausible** than the corresponding view that the aim of compulsory purchase is to compensate the expropriated for inconvenience suffered. **Although the question, 'What justifies punishment?' is ambiguous, the** correct **answer to** the question **'Why punish?' is util**itarian. It is in this sense that the utilitarian theory of punishment is essentially correct.

Even deontology would affirm under the aff interp. For Kant, retrib gives the entitlement to punish. The aim is deterrence. **Rauscher 12** writes[[4]](#footnote-4)

**Kant was long considered** to be an exemplar of the **retributiv**ist theory of punishment. While he does claim that the only proper justification of punishment is guilt for a crime, he does not limit the usefulness of punishment to retributivist matters. Punishment can have as its justification only the guilt of the criminal. All other uses of punishment, such as rehabilitation (the alleged good of the criminal) or deterrence (alleged good to society) uses the criminal merely as a means (6:331). Once this guilt is determined, **however,** Kant does not deny that something useful can be drawn from the punishment. In the Feyerabend lectures on Natural Right, **Kant is clear that the sovereign “must punish in order to obtain security”, and even while using** the law of **retribution, “in such a way the best security is obtained”** (27:1390–91). The state is authorized to use its coercive force to defend freedom against limitations to freedom; more particularly, since **right does not entail that citizens must limit** their own **freedom but only that “freedom is limited” by conditions of right**, it is right for another, i.e. the state, to actively limit citizens' freedom in accord with right (6:231). The state is authorized to use force to defend property rights (6:256). Kant's view, then, is that **punishment** of a particular individual **may serve deterrent functions even when** the punishment may **not** be **based solely on deterrence** as its justification.

2. Textuality. Aff must defend the value of rehab throughout the CJS, not just in the aim of punishment. The legal precedent is that “in” means “throughout” in a criminal justice context. **Words and Phrases 8** writes[[5]](#footnote-5)

—Reynolds v. Larkins, 14 P. 114, 10 Colo. 126 Colo. 1887. **In the act** of 1861 providing **that justices** of the peace **shall have jurisdiction “in” their** respective **counties** to hear and determine all complaints, etc., **the word “in” should be construed to mean “throughout”** such counties.

Textuality is a prima facie voter for the neg. It doesn’t matter how fair the aff is; if the case doesn’t affirm the topic, then he hasn’t met the aff burden. Also, textuality link turns other theory standards because it is the basis for claims to predictability and ground.

*[If misrepresented in CX]*

3. Distorting Lessnoff’s theory is a violation of intellectual integrity. **Torson 13** writes[[6]](#footnote-6)

Too often in debate, strategy devolves into sophistry. **Debaters utilize** a series of **tactics** designed only to muddy the water, **to obscure a fair evaluation of** the merits of their **arguments** by either judges or opponents. **This includes** the **distortion of evidence**, e.g. by reading cards out of context so as to make it seem that authors using terms differently actually intend the same meaning. It includes evasive or overly ambiguous explanations of arguments, designed to allow debaters to shift their positions in the rebuttals. It includes impossibly dense and blippy analytical frameworks with contingent standards, layers of unreasonable spikes, theory bait, and other tricks hidden throughout. **These tactics are inconsistent with** an ethic of **intellectual integrity.** The rules that we set up to make the debate game intellectually rigorous are exploited to separate us altogether from a meaningful contest of ideas; the tail wags the dog. A student deploying these tactics hopes to win not because he marshals the most compelling argument, but because his opponent makes a superficial error or his judge is too embarrassed to admit that he didn’t properly follow the argument. We hope that the practice of dialectic contestation will help us to challenge or confirm our beliefs on important personal and political questions. **Strategies of** purposeful **obfuscation**, on the other hand, **turn arguments into mere instruments of power** - ways of manipulating the circumstances to contrive a favorable outcome. **These** strategies **are disingenuous approaches to** thinking through **the topic because they are** fundamentally **unrelated to the** residual **quality of the arguments.** That bad arguments could reliably beat good ones should strike us as a very strange outcome in any debate event worthy of the name.

Intellectual integrity is the largest impact. **Torson 13** writes[[7]](#footnote-7)

**Practiced with intellectual integrity, debate** can be a powerful vehicle for personal growth. It **encourages** the **self-reflection** that helps students **to cultivate a mature inner-life**. Conscience is little more than an honest internal dialogue – the ability to critically reflect on one’s own thoughts and actions. **Openness to opposing beliefs** requires appreciating what the world looks like from someone else’s point of view, which in turn **fosters** humility, perspective, and **tolerance.** I think that many of us credit debate as a formative experience precisely because it taught us the virtue of intellectual integrity. Intellectual **i**n**t**egrity **is** also **indispensable in** cultivating a sense of **civic virtue. Our public life is plagued by sophistry and** mindless **line-toeing.** Politics is treated like a spectator sport, and we engage only if we are enthralled by the spectacle. Intellectual integrity is a bulwark against citizenship devolving in this way. One with intellectual integrity is willing to be persuaded by reasoned argument rather than held hostage by ideology or tribalism. It requires suspicion of convention and to be more than a mere political dilettante or pseudo-intellectual. **Above all, intellectual integrity bars** credulous **acquiescence to demagogues** and mediocre apologists. By careful examination of the challenges we must face together, debate can foster a mature sense of connection to our many communities. We must recognize the burden of stewardship that comes with the opportunity to work with gifted young people. If what I’ve said rings true, then the **debate** community **is obliged to embrace intellectual integrity as one of its core values.** We aspire to be a community of thinkers and learners, and **this goal is conveyed** not simply by what we teach in the classroom but **by the practices we deploy.** I encourage the examination of those practices through the lens of intellectual integrity.

D. Voter – Fairness comes first because it is a gateway issue to finding the better debater. Dropping the argument doesn’t solve because (1) my NC was already skewed. I can’t redo the NC. (2) voting on theory is the only way to deter bad arguments. Otherwise he’ll cheat for the timeskew.

Evaluate T on competing interps because reasonability is arbitrary and requires judge intervention.

1. Lessnoff, Michael. Two Justifications of Punishment. The Philosophical Quarterly, Vol. 21, No. 83 (April 1971), pp. 141-148.<http://www.jstor.org/stable/2218336> [↑](#footnote-ref-1)
2. Lessnoff, Michael. Two Justifications of Punishment. The Philosophical Quarterly, Vol. 21, No. 83 (April 1971), pp. 141-148.<http://www.jstor.org/stable/2218336> [↑](#footnote-ref-2)
3. Lessnoff, Michael. Two Justifications of Punishment. The Philosophical Quarterly, Vol. 21, No. 83 (April 1971), pp. 141-148.<http://www.jstor.org/stable/2218336> [↑](#footnote-ref-3)
4. Frederick Rauscher (Associate Professor at Michigan State University, specializing in Kant). “Kant's Social and Political Philosophy.” 19 April 2012. <http://plato.stanford.edu/entries/kant-social-political/#Pun> [↑](#footnote-ref-4)
5. Words and Phrases (multi-volume set of judicial definitions from state and federal courts). Vol. 28 2008 [204-215] [↑](#footnote-ref-5)
6. Adam Torson. “Debate and the Virtue of Intellectual Integrity by Adam Torson.” 24 March 2013. Victory Briefs. <http://victorybriefs.com/news/2013/3/debate-and-the-virtue-of-intellectual-integrity-by-adam-torson> [↑](#footnote-ref-6)
7. Adam Torson (Adam Torson has earned a Political Science B.A. with minors in History and Philosophy from the University of Minnesota, and a J.D. from the Hamline University School of Law. After a successful High School debate career, he was the Director of Debate at Hopkins High School (MN) for six years, and has been an Assistant Debate Coach at the Harvard-Westlake Upper School (CA) for two years. He was a Director of Student Life at the Victory Briefs Institute for three years and has been a Curriculum Director for three years. He is also the Managing Editor for Victory Briefs' Topic Analysis Books). “Debate and the Virtue of Intellectual Integrity by Adam Torson.” 24 March 2013. Victory Briefs. <http://victorybriefs.com/news/2013/3/debate-and-the-virtue-of-intellectual-integrity-by-adam-torson> [↑](#footnote-ref-7)